



DRAFT

February 28, 2007

Mr. Tom Fitzwater
VTA – Environmental Planning Department
3331 North First Street, Bldg B
San Jose, CA 95134

RE Draft Supplemental Environmental Impact Report
BART Extension to Milpitas, San Jose, and Santa Clara

Dear Mr. Fitzwater,

Thank you for the opportunity to comment on the Draft Supplemental Environmental Impact Report (DSEIR) dated January 2007 for the Bay Area Rapid Transit (BART) Extension Project to Milpitas, San Jose, and Santa Clara.

This letter focuses on comments to the eleven design changes that impact the City of Milpitas identified in the DSEIR as Design Changes #8 thru #18. Where appropriate, comments on additional design impacts specific to the Federal Environmental Impact Statement (FEIS) that is currently under development by the VTA are made. Comments are organized by Design Change with specific chapters of the DSEIR referenced where appropriate.

▪ **Design Change #8 – Dixon Landing Road Alignment**

The Milpitas City Council previously directed VTA staff to continue development of the BART At-Grade option as its preferred design alternative pending the development of 1) improvement plans that allows for the construction without the need to close Dixon Landing Rd and/or Milmont Drive, and 2) a Business Preservation Plan that minimizes impacts to existing businesses both at, and adjacent to, the project site.

Section 4.12 Noise

Pages 175 -178 - The proposed at-grade BART crossing at Dixon Landing Road will result in a significant increase in the number of residences affected by noise and vibration impacts. The number of affected residents will increase from 51 to 114. The DSEIR should discuss ways to reduce the number of residents affected by noise during construction and operation, and include other mitigations in addition to sound walls and insulation.

Section 4.18 Construction Impacts

The recommended closure of Dixon Landing Rd in the DSEIR is unacceptable to the City and inconsistent with previous direction from the Milpitas City Council and good faith negotiations between the City and the VTA to develop improvement plans that support the maintenance of vehicle, bicycle, and pedestrian activities on Dixon Landing Rd and Milmont Drive during all phases of construction.

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Pages 240 & 242, discusses the use of the existing commercial property located at 1770 Milmont Dr for construction staging activities. During the Scoping Phase of the DSEIR in August/September 2006, the VTA did not clearly identify the use of this property for construction staging activities. Milpitas, in its Scoping Phase Comment Letter dated September 07, 2006, discussed impacts to this property and suggested that the VTA consider property acquisition of the site due to significant impacts related to the construction of BART At-Grade option at Dixon Landing Rd and to allow for construction staging as suggested in the DSEIR. The DSEIR should clarify whether acquisition of the property at 1770 Milmont Dr is being recommended.

Page 248 discusses an 18-month construction period for either of the two options and the need for a full closure of Dixon Landing Rd for approximately 6 months in the area near the BART alignment. Milpitas requests removal of any reference in the DSEIR to close Dixon Landing Rd through construction of the BART project. The DSEIR should analyze alternative construction plans to avoid road closure of Dixon Landing Rd.

Page 248 needs to address modifications to the City's existing storm and sanitary systems for "At Grade" alternative. The document should address the impact of Dixon Landing Road closure on landfill access.

Pages 239 – 246 & 282 - 283 - The proposed construction staging areas will result in the displacement of thirteen commercial businesses at Dixon Landing Road and two businesses at Capitol Avenue. The DSEIR's conclusion that the impacts to these businesses will be less than significant is not supported by sufficient facts and analysis. The sole reference to the VTA Relocation Assistance Program without any explanation of the specific actions under the Program for the affected businesses is insufficient to support a less than significant conclusion. The permanent displacement of these businesses is a significant concern to the City. The DSEIR should analyze alternative locations, configurations or reductions in size of the construction staging areas to reduce or eliminate the impact on City businesses.

- **Design Change #9 – Berryessa Creek**

Section 4.4 Biological Resources and Wetlands

Page 76 - This design change will result in an additional permanent loss of 1 acre of wetlands in Berryessa Creek. The City supports design alternatives that would minimize the impact on wetlands.

Section 4.17 Water Resources, Water Quantity and Floodplain

Page 216 - The DSEIR assumes that both portions of Berryessa Creek (lower and upper) will be improved by Santa Clara Valley Water District (SCVWD) and US Army Corps prior to completion of the BART extension. It is our understanding that these improvements are planned to be completed by the year 2017. The DSEIR needs to discuss, and include mitigations for scenarios which include potential delays in the construction of Berryessa Creek as well as the possibility of blockage and/or backwater affect of 100-year flood on surrounding and upstream properties by the proposed retained-cut crossing Montague

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Expressway, substantially reducing the Montague Expressway capacity to convey flood waters northerly and westerly.

Also, the 100-year flood entering the City of Milpitas at Capitol Avenue is caused by Upper Penitencia Creek. This is in addition to flooding caused by Berryessa Creek. DSEIR should discuss the impact of the project on 100-year flood due to Upper Penitencia Creek and include necessary mitigations.

Section 4.18 Construction Impacts

Although not discussed in Sections 4.18 of the DSEIR, Milpitas has previously expressed concerns with potential construction impacts to the Abel St Bridge. The preliminary improvement plans for the creek realignment impact three (3) of the existing Abel St bridge columns by redirecting the creek towards the columns. In order to properly maintain the structural integrity of the Abel St Bridge, extension of the columns and reconstruction of the bridge foundations is required. Shoring to support the existing columns while they are being reconstructed may result in impacts to the bridge structures this should be discussed and analyzed in the DSEIR. DSEIR should include mitigation measures for any identified impacts during construction.

- **Design Change #10 – Crossover Tracks between Berryessa Creek and Railroad Ct**

The City of Milpitas has no comments for this design change

- **Design Change #11 – Electrical & Communications Facilities near Railroad Ct**

Document needs to describe the visual impacts of the 60 foot high tower will have on the surrounding area. The DSEIR should include further facts and analysis to support conclusion that impact is less than significant.

- **Design Change #12 – High Rail Vehicle Access**

The City of Milpitas has no comments for this design change.

- **Design Change #13 – Locomotive Wye (Milpitas)**

Milpitas requests that the VTA continue to pursue the purchase of railroad shipping rights to business north of the Montague Exp so that the railroad wye can be removed. Removal of the wye also provides for the construction of denser residential development around the BART station, which in turn provides for increased ridership potential and enhanced quality of life.

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▪ **Design Change # 14 – Curtis Avenue to Trade Zone Boulevard**

Section 4.12 Noise and Vibration

Pages 179-180 - This design change will result in a substantial increase in the number of residents experiencing significant adverse noise impacts. The number of affected residents increases from 19 under the Retained Cut to 70 under the Aerial Option. This increase in impacts to City residents is unacceptable given the reduced impacts of the Retained Cut Option which the City supports. Therefore, the City does not support the aerial options described in this design change.

Section 4.14 Socioeconomics

Page 192 - 194 - This design change will result in the displacement of City business; whereas, the Retained Cut Option does not. The City does not support the Aerial Option since the Retained Cut is a viable and preferred option that results in fewer impacts. Further, the DSEIR's statement that the VTA Relocation Assistance Program will result in a reduction in this impact to less than significant is not supported by any evidence. The document does not contain any information about the program and how it will be implemented to reduce this impact.

The following items are in need of clarification:

- Page 192 - The length of time for the construction staging period; is the “displacement” of the 13 businesses at Dixon Landing Road short-term or permanent.
- Page 193 - Impacts and/or mitigations to the City's Curtis Well.

Section 4.18 Construction Impacts

Page 250 – Please address modifications to the City's existing storm and sanitary system for all four alignment options.

Page 250 - The aerial option at Capitol Avenue crossing would result in a significant unavoidable impact to traffic on Capitol Avenue for at least 9 months. The Retained Cut Option does not have this impact. Since the Retained City Option is a feasible alternative that would avoid this significant unavoidable impact, the Aerial Option at Capitol Avenue should not be adopted. The City does not support the Aerial Option due to this and other adverse impacts identified in the DSEIR.

▪ **Design Change # 15 – Crossover tracks north of Montague Expressway**

Section 4.12 Noise & Vibration

Page 180 With similar issues to Design Change # 14, the crossover tracks north of Montague Expressway will experience the same noise and vibration impacts and require the appropriate mitigations such as the retained cut options and floating slab track, as there will be future development northeast of Montague Expressway. The document should provide analysis on planned future development of this area.

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▪ **Design Change # 16 – Electrical facilities north of Montague Expressway**

The City requests additional information on the size and level of light & noise generated by the facilities to determine if there are additional impacts to existing and future development projects near the facilities.

▪ **Design Change # 17 – Montague Capitol Station**

Chapter 4.2 Transportation and Transit

Section 4.2.3 Parking

Due to the substantial increase in estimated daily boardings in the DSEIR, the parking impact for the Montague/Capitol station should be identified as potentially significant and the DSEIR should specifically analyze whether the proposed park-and-ride (PNR) spaces will meet demand. The DSEIR shows a substantial increase in estimated boardings for the Montague/Capitol station – about 12,000 more than the estimate in the FEIR (p. 13). The FEIR estimate is 19,245 with seven stations. The DSEIR estimate is 27,757 with seven stations and 31,010 with six stations (without South Calaveras station). The DSEIR states that 38% of the station users will use PNR spaces. However, the DSEIR does not explain how the 2,030 PNR spaces for the Montague/Capitol station under the 6 station 2030 build-out will meet this demand (Table 4.2-12, p. 17). The DSEIR also should analyze any impacts of spillover parking.

The DSEIR should project near-term mitigation for the federally funded segment which includes the Montague/Capitol through the Alum Rock Stations. This should also address traffic and circulation impacts.

The higher number of boardings and parking demand demonstrates that the Surface Parking Option under Design Change #17 should not be adopted because it uses more land to provide less parking than the structured parking option, which the City supports. At the January 16, 2007, the Milpitas City Council reviewed the 2030 Parking requirements in relation to the station layout for the Montague/Capitol Station. Per unanimous vote of the City Council, an interim surface parking station layout should not be carried forth to the Final SEIR. The project should utilize garage parking as well as seek joint development shared parking.

The DSEIR should project near-term mitigation for the federally funded segment which includes the Montague/Capitol through the Alum Rock Stations. This should also address traffic and circulation impacts. A mitigation that the VTA pursue property acquisition of sites on the North of Montague Exp for both parking and enhanced pedestrian accessibility to the Montague/Capitol Station is recommended. This option is also planned for discussion in the FEIS.

Section 4.2.4 Pedestrians

Page 20 - Milpitas believes that the use of Surface Parking Only options around the Montague/Capitol Station provides for hazardous conditions for pedestrians as the distance between a BART patrons vehicle to the station is increased and the pedestrians must traverse

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across both parked and moving vehicles placing the pedestrians in a more hazardous environment. The document should reevaluate pedestrian impacts more thoroughly as they relate to traversing across parking lots.

Section 4.2.5 Traffic

Page 33-38 - This design change results in nine new significant unavoidable impacts on main City thoroughfares. The extent of these impacts is unacceptable to the City. Further, the DSEIR fails to consider all feasible mitigations to reduce these impacts to less than significant as required under CEQA. The DSEIR repeatedly dismisses all mitigation by stating “no other cost-effective feasible improvements beyond 2030 without Project” are available. However, “cost-effective” is not the only standard for feasibility. The DSEIR should identify all possible improvements and mitigations available, and then discuss feasibility as appropriate. Suggested mitigations are:

Milpitas Boulevard Corridor

The intersections of Milpitas Boulevard & Montague Exp, Milpitas Blvd & Yosemite Dr, Milpitas Blvd & Los Coches St, Milpitas Blvd & Calaveras Blvd, and Milpitas Blvd & Escuela Dr have significant impacts as a result of the BART project but the DSEIR states that no cost effective feasible improvements are available.

Milpitas requests that the VTA consider the implementation of Traffic Management Improvements on the Milpitas Blvd Corridor including traffic signal interconnection and traffic surveillance equipment as feasible mitigations so that impacts to the corridor can be more easily monitored and addressed by signal-timing solutions. In addition, Milpitas requests that the VTA identify the construction of Milpitas Blvd Extension between Montague Exp and Capitol Av as a feasible mitigation to the BART project since it is identified as a planned improvement within the existing 35% Improvement Plans.

Landess Ave Corridor

The DSEIR identifies the intersections of Landess Ave & Dempsey Rd and Landess Ave & Park Victoria as having significant impacts as a result of the BART project but that no cost effective feasible improvements are available.

Milpitas requests that contributions towards the widening of Landess Ave be considered as feasible improvements to off-set the impacts as it will provide consistency with planned widening improvements along Montague Exp planned by the County of Santa Clara.

Montague Expressway Corridor

For the intersection of Montague Exp & Great Mall Pkwy-Capitol Av, the DSEIR discusses providing a “Fair Share” contribution towards the Grade Separation of the intersection as recommended in the VTA’s Valley Transportation Plan 2030 but also identifies the location as “No Cost-Effective Feasible Mitigation Measure Available”. Montague Exp & Milpitas Blvd is also identified as having “No Cost-Effective Feasible Mitigations Measures Available.”

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The existing 35% improvement plans for the BART project used to prepare the DSEIR identify the construction of a new road, Milpitas Blvd Extension, between Montague Exp & Milpitas Blvd and Capitol Av. This new road will provide an alternative option for motorists to bypass Montague Exp & Great Mall Pkwy-Capitol Av and is already identified for funding by the BART project as it is a necessary improvement to allow the Montague/Capitol BART Station to function. Milpitas requests the the DSEIR identify the construction of Milpitas Blvd Extension as a feasible mitigation to impacts at both Montague Exp & Great Mall Pkwy-Capitol Av and Montague Exp & Milpitas Blvd. Furthermore, the construction of the road should be identified as fully-funded within the DSEIR to be consistent with the 35% BART Improvement Plans.

Section 4.11 Land Use

The DSEIR should contain an analysis of the consistency of the Project and Design Changes with the most recent Milpitas Transit Area Specific Plan. Any inconsistency of the Project and Design Changes with City Plans should be identified and analyzed. The Design Changes for the Aerial Option, Surface Parking and relocation of the transit center are inconsistent with the City's Transit Area Specific Plan. At the January 16, 2007 City Council meeting, the City Council rejected any aerial alignment option for the Montague/Capitol Station and requests the VTA to study the retained cut option only for the BART alignment.

Section 4.14 Socioeconomics

Pages 194-195, Design Change # 17 – Montague/Capitol Station Redesign – will result in the displacement and relocation of 7 more industrial businesses as compared to the station design evaluated in the FEIR. As stated above, these increased impacts on City businesses are unacceptable when there is an alternative – Retained Cut Option – which results in fewer impacts. Also, as stated above, the Relocation Assistance Program relied on for mitigation must be described in more detail in order to support the conclusion that it will reduce the impacts on City businesses to less than significant

■ **Design Change # 18 – Depth of Retained South of East Penitencia**

The City of Milpitas has no comments at this time for this design change

■ **General Comments**

In addition to comments by Milpitas Design Change, below are comments listed by sections as arranged in Chapter 4, Environmental Analysis.

Impacted Businesses and Residences

The VTA should make extensive outreach & communication efforts to the residences and businesses directly affected as listed in the DSEIR.

Section 4.2 Transportation and Transit

Page 54 - Intersection traffic volumes and levels of services for 2004 existing conditions, 2030 without project, and 2030 BART extension project conditions should be provided to expand on the number of 2030 intersections with possible mitigation as well as the 3 of the 4

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intersections in Milpitas from the FEIR that will no longer result in significant unavoidable impacts:

- Calaveras Blvd and Abel Street
- Milpitas Blvd and Jackie Street
- Great Mall Parkway and Abel Street

Section 4.5 Community Services and Facilities

Describe impacts to the community services and facilities typically served by the intersections proposed to be closed or highly constrained for several months.

Section 4.12 Noise

Page 141 - The impacts with mitigation for Spinnaker Point Apartments have numbers of 67 and 72. The Noise Element of the MGP has 65 dBA as being normally acceptable (after mitigation). Likewise, the impacts for Friendly Village Mobile Homes are 71-72 dBA and normally acceptable is 60 dBA. Terrace Gardens comes in at 73 dBA and the acceptable limit is 70dBA. These numbers are too high. This is a significant impact and mitigations should be discussed.

Section 4.15 Utilities

Table 4.15-1 shows additional utilities not included in original document. The following items should be added: SCVWD 42-inch Milpitas water pipeline, San Francisco - Public Utility Commission (SV-PUC) Hetch-Hetchy Bay Division Pipelines #3 and #4.

Section 4.14 Socioeconomics

Page 195 - The DSEIR must contain facts and evidence to support its conclusion that the loss of parking spaces for existing businesses under Design Change #19 is a less than significant impact.

Section 4.16 Visual Quality and Aesthetics

Pages 204-205 - The DSEIR's analysis of the visual impacts of the Aerial Option and increased sound wall construction under Design Changes # 14, 16 & 17 is inadequate under CEQA. The DSEIR needs further facts and analysis to support the less than significant conclusion. The DSEIR does not properly analyze the impact of the Aerial Option on views of the hills. The DSEIR also does not analyze the impacts of the Aerial Option on views from various scenic vistas in City.

Visual: Pages 204/205. The Aerial option would impact views of the hills but would have unacceptable visual impacts on nearby high density residential uses. If VTA wants to maintain ridership in the long run it should minimize visual and therefore economic impacts on residential development in the vicinity of the station where Very High Density Residential is most necessary. The impacts should be considered significant on the residents of the housing with significant environmental side effects.

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Section 4.17 Water Resources, Water Quality, and Floodplains

Milpitas requests adding text stating that project will meet environmental regulatory requirements, including the City's Floodplain regulations and NPDES storm water discharge permit, throughout all phases of construction and operations.

Section 4.18 Construction

Pages 240 & 282. The Calaveras Blvd staging area has been increased. The DSEIR needs to include in discussion that the southern tip s is located on the SFPUC Hetch-Hetchy right-of-way (see Fig 4.18-29). The DSEIR also needs to discuss the proposed Trumark residential project adjacent to this staging area and the potential for permanent displacement. In addition, a discussion for the Railroad Ave permanent displacement should also be addressed in this section.

The DSEIR should provide facts and evidence to support the estimated length of the construction periods. Construction periods vary from 6 to 18 months. Given the adverse impacts that occur during the construction period, it is critical that the time frame for construction be accurately estimated. Given experience from other BART construction projects, the time frames in the DSEIR seem short, and, therefore, may understate the potential impacts. The DSEIR should disclose, in detail, the information upon which the estimates of construction periods are based.

The DSEIR should expand its discussion of the plans and measures BART will undertake to address erosion and run-off issues during and after construction. A generalized reference to compliance with storm water run-off regulations is insufficient.

In order for the Fire department to maintain responses to fire and emergency medical calls, separate and independent access that does not increase response times shall be provided while the Dixon Landing Road and Capitol Avenue roadways are under construction. An alternative to this may be a temporary fire station or other means provided by the project to ensure fire and emergency medical services are not interrupted nor extended in time due to traffic issues caused by construction of the project.

Additionally, building/structure fire suppression services that are impacted as a result of the project should be replaced and meet the requirements of the fire department. Similarly, fire department vehicle access routes to buildings/structures altered as a result of the project shall be replaced or repaired as required by the fire department.

The Milpitas Fire department requests that the appropriate disclosures be made to project personnel at the Calaveras Boulevard construction staging area due to its location being in close proximity to facilities using toxic gases.

Section 4.19 Cumulative Impacts

Page 285 - The Centria development at the top of the right column is 464 units, not 480. It is currently under construction.

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Page 285 Cumulative Impacts - The DSEIR text needs to be updated to read from "private developer is proposing to construct on 480 apts on 8.2 acres bounded by Great Mall Parkway, Abel Street, Main Street, and Penitencia Creek" to read "construction began in 2006 on 480 apts"

The Milpitas City Council reviewed and approved the previous comments on the DSEIR. The City looks forward to continuing to work on the BART extension project and is committed to supporting the project through appropriate land use planning and capital project endeavors.

If you have any questions or concerns regarding our comments, please contact Greg Armendariz at 408-586-3317.

Sincerely,

Jose Esteves
Mayor

cc: Milpitas City Council
Milpitas BART Team